

## **Chapter 521 Rule Amendment Pertaining to Post-Construction Storm Water Discharges in Urban Impaired Stream Watersheds**

***This rulemaking would amend Applications for Waste Discharge Licenses, 06-096 CMR 521, by adding a new Section 9-A.***

*Proposed revisions from posting draft denoted by underline.*

**Section 9-A. Post Construction Storm water discharges in urban impaired stream watersheds.** An owner or operator of property in an urban impaired stream watershed that has been designated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§1251 et seq., and 40 C.F.R. §122.26 (a)(9)(i)(D), or the Department pursuant to Chapter 521(9)(a)(1)(v), as requiring a storm water discharge permit due to post-construction storm water flow from impervious area, shall either provide a notice of intent to comply with a general permit adopted pursuant to Chapter 529, if available, or shall apply for an individual permit.

- (a) Individual permit requirements. To qualify for an individual permit, the following requirements must be met in addition to otherwise applicable requirements.
- (1) The basic standards described in the Department's Stormwater Management Rules, Chapter 500, Section 4(A), addressing erosion and sedimentation control, inspection and maintenance, and housekeeping must be met.
  - (2) Provisions for treatment of stormwater from the impervious area of the property must be provided that comply with the general standards described in the Department's Stormwater Management Rules, Chapter 500, Section 4(B), with no exception for a linear portion of a project. If on-site conditions make storm water treatment on the operator's site impracticable, off-site treatment may approved if located in the same watershed. If provisions for treatment of storm water meeting these standards are not in place at the time of application, then the application must include plans for storm water treatment measures that will be put in place within two years of permit issuance. The Department may extend the two-year period up to five years if the parcel includes five acres or more of impervious area and interim milestones are approved.
  - (3) Inspections of best management practices must occur at least annually by a qualified person to determine if they are in place and functioning as intended, and if not, corrective action must be taken within 30 days. Maintenance plans for the property must include provisions for sweeping paved areas at least once per year after snowmelt.
  - (4) An on-going monitoring program must be established, either by measuring the water quality of storm water discharge from the project site for parameters and at a frequency approved by the Department, or by contributing to a Department-approved monitoring program, at a rate consistent with assessments to other participants of a Department-approved watershed management plan for monitoring work.

- (b) Stream restoration. When the stream channel or riparian area has been impacted due to storm water flow from the applicant's impervious area, the Department may require the following:
- (1) Measures be taken to mitigate the effects of the past storm water discharges from the applicant's property on the urban impaired stream, such as restoration of floodplain area, establishment of vegetated riparian buffers, and stabilization of the stream channel. Where the adverse effect to be mitigated is the result of discharges from the property of applicant in combination with discharges from other property, then the mitigation required will be in proportion to the estimated discharge from the applicant's property in relation to the amount of contributing discharge from other properties; or
  - (2) Where a Department-approved watershed management plan exists and is being implemented, a financial contribution, or a combination of a financial contribution and mitigation toward restoration of floodplain area, establishment of vegetated riparian buffers, and stabilization of the stream channel, consistent with the approved watershed management plan. The financial contribution must be based on the amount of impact caused by the operator's past discharges where this can be assessed. Otherwise, payment may be based on the percentage of impervious area in the watershed that is located on the applicant's property, multiplied by the estimated total cost for stream channel restoration. Payments may be spread over multiple years in accordance with a schedule approved by the Department, and must be utilized for specific mitigation work identified in the watershed plan.
- (c) Credit for watershed plan contributions. The Department may allow an applicant to reduce the amount of treatment for impervious area required in section 9-A(a) by giving credit for prior contributions toward implementation of a Department-approved watershed management plan. The amount of credit given is determined by the department on a case-by-case basis.
- (d) Additional requirements. The Department may establish additional on-site mitigation and stream restoration requirements, if necessary, to ensure progress in restoring water quality in the impaired stream.

AUTHORITY: 3 M.R.S.A. § 341-D

EFFECTIVE: